



**State of New Hampshire**  
Public Employee Labor Relations Board

**International Union of Painters and Allied Trades, District Council 35**

**and**

**University of New Hampshire**

**Case No. E-0277-1**

**Decision No. 2023-320**

**Appearances:**

Brian P. Senier, Esq., Feinberg, Dumont & Brennan, Boston, Massachusetts, for the I.U.P.A.T., District Council 35

Karyl Roberts Martin, Esq., Associate General Counsel, University System of New Hampshire, Concord, NH, for the University of NH

**Background:**

On August 18, 2023, the International Union of Painters and Allied Trades, District Council 35 (Union) filed a petition for certification seeking to represent certain employees of the University of New Hampshire (UNH) Housing Department. The petition was supported by the requisite number of confidential authorization cards as reflected in the PELRB August 25, 2023 Report re: Inspection of Confidential Authorization Cards. The UNH objects to the proposed bargaining unit composition alleging that the team leads are supervisory employees within the meaning of RSA 273-A:8, II and, therefore, cannot be included in the bargaining unit with employees they supervise, building service workers and general maintenance workers. The UNH requests that the proposed bargaining unit be modified accordingly.

A hearing on objection was held on October 5, 2023, and both parties filed post hearing briefs. The parties had the full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties' Joint Stipulation of Facts is incorporated into

the Findings of Fact below and the decision is as follows.

### **Findings of Fact**

1. The UNH is a public employer within the meaning of RSA 273-A:I, X.
2. The Union is an employee organization seeking to represent Building Service Workers/Housekeepers and General Maintenance Workers, including team leads, who work for the UNH Durham Housing Department. The proposed unit does not include “Building Service Workers,” who work for UNH departments other than the Housing Department.
3. As of September 25, 2023, there were forty three full-time, benefits-eligible employees classified as building service workers and four full-time, benefits-eligible employees classified as general maintenance workers working for the UNH Durham Housing Department. “All of these employees perform similar job duties for the Housing Department, primarily housekeeping tasks in University residential buildings (dorms and apartments).” Stipulation at 2.
4. Housekeeping teams are organized into “areas” based on the location of the residential buildings where they work. Each area team reports to either a building service team lead or a maintenance team lead worker. These team leads report to the UNH Housekeeping Manager, Dana Depelteau (Manager), who reports to Associate Director of Housing and Facilities Bill Meehan. Bill Meehan reports to Housing Director Andy Petters (Director). See Stipulation at 3 & UNH Exhibit 1
5. There are currently four areas” of residential dorm buildings, with approximately 10-15 full-time employees assigned to work under each area team lead. There is also a team of weekend housekeeping staff, who are overseen by a building service team lead (Angela Sweet). In addition, there is a team of four employees classified as general maintenance workers who report to a team lead for the University apartments. Stipulation at 4.
6. The team leads are responsible for scheduling and oversight of the housekeepers,

conducting building inspections, interacting with campus stakeholders, overseeing and evaluating the staff on their teams, reporting equipment and safety issues to the Facilities Department for repair, and other duties. Their responsibilities include evaluating work performance and providing feedback to the staff on their teams, including addressing performance concerns through job coaching and direct feedback. Stipulation at 5.

7. Chris Lavoie is a full-time employee with “classification title” of “Building Service Team Lead” and “operational title” of “Floor Care Lead.” Under his position description, he is responsible for developing and managing a carpet care program for the residential buildings, including maintaining carpet care equipment and developing and executing a preventative maintenance program. He also performs other cleaning/housekeeping work that does not involve floor care and is on call for cleaning/housekeeping work. The floor care lead oversees the work of students. Students are not in the proposed bargaining unit. No employees in the proposed bargaining unit report to the floor care lead. See Stipulation at 6 & UNH Exhibit 1.

8. The job classification for floor care lead provides in part as follows:

Summary of position:

This position will serve as the lead for all carpet cleaning for residence halls and on campus apartments. This role will have the responsibility for developing a carpet cleaning program to include scheduling, training inventory management, and the maintenance of equipment. Equipment includes 2 truck mount units, a ride on extractor and multiple walk behind extractors and vacuum cleaners. The position involves working independently and leading staff in the execution of a carpet care program in times of minimum occupancy.

...

See UNH Exh. 5.

9. According to the classification, the floor care lead’s duties/responsibilities include the following:

30% Perform tasks related to developing and managing a carpet care program for residence halls and on campus apartments. Coordinate and work with other staff, departments, and vendors when applicable. Serve as lead resource for routine upkeep and spot treatments.

25% Perform tasks related to maintaining carpet care equipment... Develop and execute a preventative maintenance program and a system for unforeseen repairs. Create a replacement plan for aging equipment.

20% Develop and execute a restorative carpet cleaning program during winter and summer breaks. To include scheduling, crew oversight and quality assurance.

10% Coordinate with the Manager the inventory and procurement of supply needs to support the program. Provide reports to Manager to update on restorative cleaning progress equipment inventories and replacement plans.

10% Take part in a rotating on call schedule to respond to after hour emergencies. Participate in job related training and team meetings including regular staff meetings, annual safety trainings, and Department of Housing and university community events as required.

5% Perform other duties as assigned.

None of the floor care lead's job classification duties/responsibilities involve employee evaluations/feedback or discipline. See UNH Exh. 5.

10. The job classification for building service team lead provides in part as follows:

Summary of Position:

*Under supervision of the Housekeeping Services Manager*, this position is responsible for overall cleanliness of an assigned area of university residential halls including the supervision of 10-15 full time residential hall housekeepers. Responsible for all general cleaning, floor care, training, customer relations, employee task assignment, job performance reviews, and quality assurance.

See UNH Exh. 2 (emphasis added).

11. According to the classification, the building service team lead's duties/responsibilities include the following:

45% [of time] Supervise, plan, and schedule work performed by 10-15 full time residential housekeeping staff. Conduct routine inspections and evaluate quality of work to ensure appropriate level of cleanliness in residential halls. Interact with Housing and Residential Life staff, residents, and other university stakeholders to address cleanliness in assigned areas. Perform cleaning tasks and routine housekeeping duties as needed. Make appropriate work decisions considering staffing levels and operational needs. Regularly update the Housekeeping Services Manager on issues impacting the area of responsibility.

15% [of time] Maintain sufficient inventory and issue supplies and equipment for buildings in assigned area. Ensure the safety of all assets and that they are in proper working condition. Establish routine preventive maintenance program for assigned equipment. Request to purchase additional supplies, equipment, and materials based on operational needs. Supervise the organization and cleanliness of housekeeping storage space in assigned areas.

15% [of time] Facilitate monthly staff meetings and monitor safety training for all employees as required by UNH Environmental Health and Safety. Attend Department of Housing and university community meetings and events as directed. Be knowledgeable of current American with Disabilities Act (ADA) and OSHA regulations and impact on work areas. Observe and report safety concerns, defects, deterioration and wear and tear of facilities using an online reporting system. Ensure the safe working practices of each employee and report accidents using the university reporting process.

10% [of time] Evaluate and provide regular performance feedback to staff. Conduct annual assessments for all direct reports and deliver written documentation to individual employees. Work with employees on job performance and personal improvement through the coaching for performance appraisal process. Ensure employee understands expected quality standards and professional conduct on the job. Conduct annual quality assurance inspections of assigned residential hall buildings. Monitor compliance with department and University rules, practices, and procedures.

10% [of time] Take part in an afterhours on call rotation and respond to emergency clean ups as needed. Responsible for key control/issuance to staff in assigned buildings. Work with university facilities and grounds as needed.

5% of time Performs other related duties as assigned.

See UNH Exh. 2.

12. The job classification for maintenance team lead worker provides in part as follows:

**Summary of Position:**

*Under Supervision of the Housekeeping Services Manager, this position is responsible for overall cleanliness, light maintenance, and grounds of, roughly 600000 square feet of university on campus apartments. Manage, plan, and schedule work of an assigned group of 4 full time staff. Oversee the work of 4-20 student staff.*

...

**Other Minimum Qualifications:**

Strong interpersonal communication skills. Strong supervisory skills with the ability to supervise large groups of employees. Ability to operate power equipment. Thorough knowledge of cleaning materials, processes, and equipment. Knowledge of grounds and light building maintenance. Ability and willingness to respond to emergency situations...

See UNH Exh. 4 (emphasis added).

13. According to the job classification, the maintenance team lead worker's duties/responsibilities include the following:

45% Supervise, plan, and schedule work of 4 full time staff and 4-20 student staff. Conduct routine inspections and evaluate quality of work to ensure standard levels of cleanliness and maintenance in on campus apartment buildings. Work with Department of Housing staff, residents, and other university stakeholders to address cleanliness, maintenance, and grounds and concerns in assigned area. Manage maintenance management program to report and assign work to appropriate trades. Perform cleaning, maintenance, and grounds tasks as needed. Manage work assignments based on staffing levels and operational needs. Inform Housekeeping Services Manager of recommended changes.

15% Maintain sufficient inventory levels for buildings in assigned area and issue supplies and equipment as needed. Ensure all equipment is in safe working condition. Establish repair and preventative maintenance program for assigned equipment. Request additional supplies, equipment, and materials based on operational needs. Supervise the organization and cleanliness of housekeeping and maintenance storage space in assigned areas.

10% Facilitate regular staff meetings and monitor annual safety training for all employees as required by UNH Environmental Health and Safety. Represent team at departmental and university meetings as required. Be knowledgeable of current American with Disabilities Act (ADA) and OSHA regulations. Observe and report safety concerns, defects, deterioration and wear and tear of facilities. Report employee accidents, ensure the safe working practices of each assigned employee.

10% Evaluate and provide regular performance feedback to staff. Conduct annual assessments for all direct reports and deliver written documentation to individual employees. Work with employees on job performance and personal improvement through the work performance appraisal process. Ensures employee understands expected quality standards and professional conduct on the job. Conduct annual Quality Assurance inspections of assigned Apartment Hall buildings. Monitor compliance with all department and University rules, practices, and procedures.

10% Respond to after hour emergency calls on a rotational basis. Responsible for key control/issuance to staff in assigned buildings.

5% Work with UNH facilities and grounds whenever needed or required. Manage Housing Facilities and Operations student and adjunct work crews for the on-campus apartments.

5% Perform other related duties as assigned.

See UNH Exh. 4.

14. Under job classifications, only 10% leads' time is dedicated to evaluating work and providing regular performance feedback to staff. Building service team leads and maintenance team lead workers are also required to perform cleaning tasks and routine housekeeping and grounds maintenance duties.

15. The job classification for building service worker provides in part as follows:

Summary of Position:

Under guidance from the area supervisor, perform a variety of routine housekeeping tasks designed to provide and maintain a safe, clean, and healthy living and working environment for residents and in university Residential Halls. Tasks also include restorative cleaning tasks following student vacancies, rotating summer camps, conferences, and student orientation.

See UNH Exh. 6 (incorporated by reference in full).

16. The job classification for housing maintenance worker provides in part as follows:

Summary of Position:

Perform routine housekeeping, light maintenance, and grounds (including snow removal) related tasks to maintain a safe, clean, and healthy living and working environment for residents and assigned staff of 2, on campus, university apartment complexes.

See UNH Exh. 7 (incorporated by reference in full).

17. Under their job classifications, the Supervisor for housing maintenance workers and building service workers is Housekeeping Services Manager and not a "team lead." See UNH Exhs. 6 & 7, p. 4.

18. There is no evidence that team leads are required to have any "supervisory" training. The level of education required for a lead position is a high school degree or equivalent.

19. Like building service workers and house maintenance workers, team leads are hourly employees albeit under a different pay grade.

20. Under the team leads' job classifications, they perform their duties under the "supervision of the Housekeeping Services Manager" and are required to regularly update the Manager on issues impacting their area of responsibility.

21. Team leads perform largely the same work as other employees in the proposed bargaining unit. They are frequently on call for cleaning and housekeeping work.

22. The team leads are expected to complete Annual Review/Coaching Feedback form (feedback form). The form provides a guide on how to complete the form (not included in exhibits). The form provides space to list three "strengths" with a "competency headline," "clarifying statement," and "3 examples & impact" for each strength and three "opportunities for improvement" with a "competency headline," "clarifying statement," and "3 examples & impact" for each "opportunity." The form also contains a section for "Review of Prior Year's Goals (general comments on developmental and professional goal attainment)" and a section titled "Goals for the Upcoming Year" with an instruction to list and describe at least 3 goals and characterizing each goal in one of the following terms: specific, measurable, attainable, realistic, and time bound. The form provides a subsection for Summary/General Comments and is supposed to be signed by a lead, an employee, the Manager, and the Director. The form does not have any sections or instructions for recommendations of pay raises, promotions, or discipline. See UNH Exh. 3.

23. An employee fills out a portion of the Coaching Feedback form and hands it to a team lead, who fills out the rest, after which they meet and review the completed form. The form is then passed to Manager Depelteau and, upon his approval, up the "chain of command" to Director Petters. Director Petters reviews the form and upon approval submits it to the Human Resources. Manager Depelteau and other managers in the "chain of command" have authority to change the wording of the completed feedback form or reject it. If the Human Resources Business



Partner (HR) find a feedback form acceptable, it is placed in an employee's file. The coaching feedback forms must comply with the established UNH policies.

24. Team leads make sure all buildings in their assigned area have employees assigned to them. If an employee is out on leave, team leads can move employees from other buildings to cover for the absent employee and, if they do not have employees to cover a specific area or task, team leads perform the cleaning/housekeeping tasks themselves.

25. Unlike team leads, Manager Depelteau and other managers never perform cleaning/housekeeping tasks.

26. Under the supervision of the Manager, team leads review timecards and approve leave requests using the UNH Kronos system.

27. Team leads, who are available, attend weekly meetings with the Manager. The topics discussed at these meetings include things happening in the building, planning, upcoming events, projects the Department is working on, equipment, inventory, and uniforms. Employee performance issues are not usually discussed at these meetings because, under the UNH policies, they are confidential.

28. Job interviews are set up by Manager Depelteau. He chooses to involve team leads in interview process. However, team leads are not required to participate in interviews. Any team lead who is available can attend job interviews along with the Manager. After an interview, a team lead can make a recommendation to the Manager. The hiring process is collaborative, but the final hiring decision is made by the management, and not team leads. The newly hired employees are probationary employees for at least over 4 months, and therefore, are not public employees within the meaning of RSA 273-A:1, IX (d) and are not bargaining unit employees. See August 25, 2023 UNH Employee List.

29. The team leads also participate in promotion interviews with the Manager and may make recommendations. The Manager is not required to follow their recommendation. Team leads do not make final decisions regarding promotions.

30. Christine Glidden was employed as a building service worker and later promoted to a building service team lead position. As a team lead, she still performs the same work as housekeepers/workers do. She also makes sure that the work was performed but she does not create work schedules. The team leads' involvement in scheduling appears to be limited to moving employees around within the assigned area, specifically the "floaters" who are not usually assigned to one area (Meehan Testimony).

31. A housekeeper/worker can be asked to cover a lead team position. Such worker would receive a stipend.

32. There is no evidence that team leads conduct internal affairs investigations.

33. The UNH disciplinary procedure, followed by all departments, consists of the following steps: verbal warning, written warning, written warning with an improvement plan, and termination.

34. Team leads have no authority to issue verbal or written warnings.

35. Team leads can provide coaching to an employee when there is an issue with an employee's performance. Coaching is not discipline (Meehan Testimony). If a performance issue does not get resolved through coaching, a team lead has to notify the Manager. It appears, the lead can complete an UNH template form to describe the issue and propose a course of action, such as a verbal warning, and submit it to the Manager.<sup>1</sup> The Manager can disregard the lead's suggestion and has done so in the past.

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<sup>1</sup> The UNH failed to present any documentary evidence of the so-called "write ups" or of the UNH forms completed by team leads.

36. If there is a potential for a warning, the HR would be immediately informed and involved in the whole process. The HR reviews documentation and ensures that the UNH disciplinary process is being followed and that the appropriate coaching has been completed. A decision on what action to take is made collectively by the management and the HR. The feedback on a verbal warning is delivered to an employee by the Manager and a team lead but when the process escalates to a written warning, the decision is delivered to the employee by the HR, the Manager, and a team lead. When the disciplinary decision is a written warning with an improvement plan, a team lead would be responsible for creating an improvement plan and measurable goals using the UNH template form. An improvement plan would include what the expectations are moving forward and goals to be achieved. The HR reviews this paperwork, and if it is correct, the HR delivers the improvement plan with the team lead to the employee. A team lead monitors the progress and if a plan is not followed, notifies the Manager. The HR is also notified. The Manager, the HR, the Associate Director, and the Director are involved in making a termination decision. If a termination decision is made, the HR, the Manager, and a team lead deliver the notice to an employee.

37. The team leads' job classifications do not give them any authority to discipline other employees in the proposed bargaining unit or to recommend suspension or termination.

### **Decision and Order**

#### **Decision Summary**

The evidence is insufficient to show that team leads exercise discretion in their work to classify them as supervisors within the meaning of RSA 273-A:8, II. Accordingly, they are included in the proposed bargaining unit.

#### **Jurisdiction**

The PELRB has jurisdiction to determine the appropriate bargaining unit and to certify

the exclusive representative thereof. See RSA 273-A:8, RSA 273-A:10, and Admin. R. Pub 302.

### **Discussion**

The only issue in this case is whether the team leads are statutory supervisory employees and should, therefore, be excluded from the proposed unit. RSA 273-A:8, II provides that “[p]ersons exercising supervisory authority *involving the significant exercise of discretion* may not belong to the same bargaining unit as the employees they supervise.” (Emphasis added.)<sup>2</sup> The Supreme Court recognized that “[d]etermining where in the pyramid of administrative functions an employee becomes part of ‘management’ is not a simple task.” *In re Nashua Association of School Principals*, 119 N.H. 90, 93 (1979). The burden of establishing supervisory status rests on the party alleging that status. See Admin R. Pub 201.06 (c) (“In all adjudicatory hearings under these rules, the party asserting the affirmative of a proposition shall bear the burden of proving the proposition by a preponderance of the evidence.”) See also The Developing Labor Law, Vol II, 2264 (Higgins, 5<sup>th</sup> Ed. 2006).

The term “supervisory” has special meaning under RSA 273-A:8, II. See *AFSCME Council 93, Local 1801, AFL-CIO and Derry Coop. School District (SAU 10)*, PELRB Decision No. 2019-043. The status of supervisor is “determined by an individual’s duties, and not by title or job classification.” See The Developing Labor Law, *supra*, at 2264. Analysis of the supervisory status is guided in part by the standard articulated in *Appeal of East Derry Fire Precinct*, 137 NH 607, 611 (1993), which provides that “[a] supervisory relationship exists when the supervisor is genuinely vested with significant supervisory authority that may be exerted or withheld depending on his or her discretion”; and that “some employees performing supervisory functions in accordance with professional norms will not be vested with the ‘supervisory

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<sup>2</sup>Discretion is defined as an “ability to make responsible decision” or “individual choice or judgement ... power of free decision or latitude of choice within certain legal bounds...” See Merriam Webster’s Collegiate Dictionary, 332 (10th ed. 1993).

authority involving the significant exercise of discretion' described by RSA 273-A:8, II." *Id.*

Supervisory employees are separated from the employees they supervise "to avoid conflicts between the two groups because of the differing duties and relationships which characterize each group." *Appeal of Town of Stratham*, 144 N.H. 429, 432 (1999). It is therefore proper to examine "the degree of significance of the exercise of discretion as well as the propensity to create conflict within the same bargaining unit because of the differing duties and relationships." See *Tilton Police Union, NEPBA Local 29 and Town of Tilton*, PELRB 2007-100. Important factors to consider include an "employee's authority to evaluate other employees, the employee's supervisory role, and the employee's disciplinary authority." *Appeal of Town of Stratham*, supra, 144 N.H. at 432. However, the fact that an employee has some authority in the areas of discipline, evaluation, and hiring "is the start, and not the end, of the analysis because positions possessing some authority in these areas are not *per se* supervisors within the meaning of the statute." *Tilton Police Union*, supra, PELRB Decision No. 2007-100. A proper assessment of whether a position is supervisory "requires consideration of matters such as the nature, extent, character and quality of [employee's] authority and involvement in the areas of discipline, evaluations, and hiring." See *id.*

In *I.U.O.E. Local 98 v. Town of Pembroke*, PELRB Decision No. 2006-205, the foremen positions were not supervisory within the meaning of the statute. While the foremen were involved in assigning work and supervising the proper completion of work, these duties were consistent with their status as working foremen and alone were insufficient to qualify the positions as supervisory. *Id.* at p. 5. While the town relied on evidence of the foremen's involvement in the process of employee evaluation, hiring, firing, and discipline, the hearing officer found that foremen's involvement in these areas was not required and was informal, irregular, and ill-defined; and that they acted in support of, or directly with, the department head

and without a significant degree of discretion. On balance, the evidence did not support the conclusion that the foremen exercised supervisory authority involving the significant exercise of discretion. *Id.*

Similarly, in *AFSCME Council 93, Local 1801, AFL-CIO and Derry Coop. School District*, PELRB Decision 2019-043, team leaders/shift supervisors were not statutory supervisors based upon an assessment of their authority to evaluate other custodians, their supervisory role, and their disciplinary authority. See *id.* at 6-7. The team leaders were charged with providing input to the director of facilities on custodian evaluations, and this was accomplished by their completion of the evaluation form in concert with the principal. *Id.* at 6. Team leaders attended the meetings in which the principal reviewed evaluations with subject employees, but they were passive participants. *Id.* The involvement of team leaders in employee evaluations was limited, and occurred under the supervision and oversight of the building principal. *Id.* Further, there was no evidence that employees were provided supervision-related training upon promotion to a team leader position. *Id.* at 3. Although the district alleged that the team leaders had authority to discipline other unit employees and offered a letter of verbal reprimand allegedly issued by a team leader as an exhibit, the number of factors weighed against a finding of the team leaders' disciplinary authority, e.g. disciplinary authority was not documented in writing, such as a job description; employees promoted to team leader position were not informed that they now had authority and responsibility to discipline custodians; and their workplace did not include a management level work station or equipment. See *id.* at 6-7. The evidence demonstrated that team leaders were more members of the custodial team than supervisors of the team and were akin to "working foremen." The team leaders were included in the bargaining unit. *Id.* at 7.

Also, in *Teamsters Local Union 633 of New Hampshire and Rockingham County*, PELRB Decision No. 2011-203, corrections sergeants were included in the bargaining unit with officers because the degree of supervisory authority exercised by the sergeants was not likely to create a conflict within the proposed bargaining unit. Although sergeants completed annual evaluation forms for other employees in the bargaining unit, the evaluation forms were then moved up the chain of command and each superior officer in that chain had authority to override the evaluation prepared by a sergeant. See *id.* at 11. There was also insufficient evidence that the evaluations prepared by the sergeants were a significant factor in determining pay increases, promotions, demotions, discipline, or terminations, and only commissioners had authority to hire, demote, promote, or terminate employees. *Id.* Sergeants could issue verbal warnings but did not have authority to issue written warnings, to conduct internal affairs investigations, or to recommend demotion or termination. See *id.* at 5-6. The supervisory authority exercised by sergeants was found to be relatively limited and in nature of an employee performing some supervisory functions in accordance with professional norms, akin to a “working foreman.” *Id.* at 11. The extent to which sergeants were involved in discipline, evaluation, and the hiring processes, and the nature of their involvement did not rise to the level of the significant exercise of discretion that would warrant exclusion from the bargaining unit. *Id.* See also *Specialists of Monadnock District, SAU 93/NEA-NH and Monadnock Regional School District, SAU 93*, PELRB Decision No. 2012-086 (finding employees who had professional obligation to oversee assistants, including completion of evaluation forms, but who did not have authority to hire, discipline, demote, promote, or terminate assistants, or to recommend such actions, were not supervisory employees); and *Appeal of City of Concord*, 123 N.H. 256, 257-58 (1983) (finding fire department battalion chiefs were not statutory supervisory employees “[b]ecause the record

does not indicate that the battalion chiefs exercise supervisory authority entailing significant discretion”).

In contrast, in *Town of Guilford and AFSCME Council 93, Local 534, Guilford Public Works Employees*, PELRB Decision No. 2015-196, the position of head mechanic was found to be a supervisory within the meaning of RSA 273-A:8, II because, among other things, the head mechanic had authority to discipline bargaining unit employees and to recommend suspension and termination. *Id.* He also had authority to evaluate other employees in the unit and the evaluations were placed in employees’ personnel files and were relied upon by the management when making decision to promote, demote or terminate employees. *Id.*

In this case, team lead positions are similar to foremen positions in *Pembroke* and team leader positions in *Derry*. Team leads perform largely the same work as building service/general maintenance workers, including cleaning and maintenance of the buildings and grounds. The coaching feedback they are charged with providing is accomplished through completion of the UNH evaluation form in concert with the employees under the supervision of the Manager. The feedback forms have to be approved by the Manager, Director, and finally the HR. Each person in this “chain of command” has authority to override team leads’ feedback. Only if the HR finds them acceptable, they are placed in employees’ files. The coaching feedback form is completed with accordance with the UNH policies which do not leave much room for a team lead’s discretion. These forms are detailed but do not provide any sections for recommending pay raises, promotions, or discipline.<sup>3</sup> In summary, the involvement of team leads in employee coaching feedback is limited, occurs under the supervision and oversight of the several managers and the HR, and does not involve significant exercise of discretion.

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<sup>3</sup> Associate Director Meehan’s testimony appears to suggest that the coaching feedback is taken into consideration in awarding pay raises only if there is a “merit option.” As there was no evidence presented as to what a “merit option” was or as to the procedure/schedule of awarding pay raises, I find this testimony without foundation and do not assign it significant weight.



Further, team leads possess some general oversight authority in areas outlined in the classifications, including making sure that cleaning/housekeeping tasks are accomplished. They move employees around within the assigned area, specifically the “floaters” who are not usually assigned to one area. However, there is no evidence that these activities require the significant exercise of judgment or discretion. Likewise, team leads’ attendance of weekly meetings with the Manager is not indicative of their supervisory status as employee performance issues are not usually discussed at these meetings. Attending such meetings is unlikely to create a potential for a conflict within a bargaining unit or a division of loyalties.

The evidence also shows that, like in *Pembroke*, the leads’ participation in the hiring process is not required. In addition, leads’ participation in job interviews is unlikely to create a conflict as newly-hired employees are not “public employees” within the meaning of RSA 273-A:1, IX and are not members of the bargaining unit until and unless they complete their probation. There is no evidence in this case to indicate that team leads play any role in a decision to grant or deny a probationary employee a permanent status.

Moreover, under job classifications, team leads do not have any authority to discipline other employees in the proposed unit or to recommend suspension or termination, unlike the head mechanic in *Guilford* case. If they encounter a performance issue, they can coach an employee. Coaching is not discipline. Team leads have no authority to issue verbal or written warnings. When they encounter any issue that cannot be resolved through coaching, they must submit a completed UNH form to the Manager; and the HR gets involved as soon as this occurs and remains involved throughout the process. The Manager can disregard team leads’ suggestions as to the course of action and has done so in the past. The HR reviews all the paperwork involving a potential for a warning and makes sure the Department complies with the UNH procedures. The discipline process is collaborative, however, the Manager, the HR, the

Associate Director, and the Director, and not a team lead, are involved in making a termination decision. The UNH disciplinary process is akin to “professional norms” that do not vest team leads with significant discretion in disciplinary matters.

As to the floor care lead, no bargaining unit employees report to this position and the job classification does not assign to this position any authority related to evaluations, hiring/promotion, or discipline.

There are additional factors that weigh against a finding that team leads possess the supervisory authority contemplated by the statute. For example, the building service worker’s and housing maintenance worker’s job classifications clearly state that their supervisor is the Housekeeping Services Manager and not a team lead. The classifications also specifically state that the leads perform their duties under the supervision of the Manager. In addition, the disciplinary authority of supervisors is normally documented in writing, but in this case, there is a conspicuous absence of any references to the disciplinary authority of team leads in their job classifications. Also, there is insufficient evidence that team leads have an office or a workstation equipped with a computer as might be expected of a supervisory level employee who has to complete certain amount of paperwork; and the job classifications list high school diploma as a sufficient level of education and do not require any additional “supervisory” training. In summary, the evidence is insufficient to tip the scales in favor of a finding that team leads have the supervisory authority ascribed to them by the UNH in these proceedings.

The underlying purpose of the RSA 273-A:8, II supervisory exclusion is the avoidance of conflicts of interest within the bargaining unit. Here, team leads are part of the housekeeping/maintenance teams, and their work is largely the same as that of their co-workers. In fact, like foremen in *Pembroke* and team leaders in *Derry*, a team lead is more a member of the team than a supervisor of the team, and is akin to a “working foreman.” Team leads’

“supervisory” duties are fairly limited, are unlikely to create a conflict within the unit, and do not involve the significant exercise of discretion within the meaning of RSA 273-A:8, II.

Based on the foregoing, the team leads are included in the bargaining unit and the following bargaining unit is approved:


**Unit:** Building Service Workers/Housekeepers, General Maintenance Workers, Building Service Team Leads, Maintenance Team Lead Workers, and Floor Care Lead.

**Excluded:** Building Service Workers who work in departments other than the UNH Housing Department.

The approved unit contains more 10 employees with the same community of interest as required under RSA 273-A:8, I. Accordingly, the PELRB will conduct a secret ballot election pursuant to RSA 273-A:10 to determine the exclusive representative of the approved unit, if any. “I.U.P.A.T., District Council 35” and “No Representative” will appear as choices on the ballot. An Order for Election shall issue in due course and a pre-election conference shall be conducted pursuant to Pub 303.02.

So ordered.

Date: 12/26/2023

  
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